



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Adopt resolution authorizing the City Manager to execute electric utility rate contracts for three commercial/industrial customers; Kubota Tractor Corporation, Larry Methvin Installation and Lodi Memorial Hospital (EUD)

MEETING DATE: May 5, 2004

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: That the City Council adopt a resolution authorizing the City Manager to execute new electric utility rate contracts for three commercial/industrial customers; Kubota Tractor Corporation, Larry Methvin Installation and Lodi Memorial Hospital.

BACKGROUND INFORMATION: In October of 2003, the Electric Utility Department presented to the Lodi City Council numerous electric utility rate contracts for either new industrial customers, or for existing industrial customers. The contracts for existing industrial customers were approved as contracts that would transition these customers to a published electric utility rate over a designated period of time.

By way of this Council item, Electric Utility staff is recommending approval of two (2) electric utility rate contracts for new industrial customers Kubota Tractor Corporation and Larry Methvin Installation, Incorporated. The proposed rate contracts are for periods of three years and two years, respectively. The rate discounts provided for each of these new customers is designed as an economic incentive tool, as a part of the City of Lodi economic development policy, to locate their operations within the city.

The third contract included in this Council item is for Lodi Memorial Hospital. The hospital was on a contract rate for several years, however, that contract has expired. The proposed new electric utility rate contract will be for a period of three years, and includes a 12.9 percent rate increase over the previous contract utility rate provided to the hospital.

Electric Utility staff has worked closely with representatives from each of the three customers included in this Council action, and the customers are informed as to the elements of the proposed electric utility rate contracts. Electric Utility staff respectfully recommends approval of these electric utility rate contracts.

FUNDING: N/A

Alan N. Vallow
Electric Utility Director

PREPARED BY: Rob Lechner, Manager of Customer Service & Programs

ANV/RL/ist
Attachments

cc: City Attorney

Finance Director

APPROVED:
H. Dixon Flynn, City Manager

RATE AGREEMENT
BETWEEN
KUBOTA TRACTOR CORPORATION
AND
THE CITY OF LODI

This Agreement is made by, and between, **Kubota Tractor Corporation** ("Customer") and the CITY OF LODI ("City"), collectively called "the Parties" and individually as "Party". This Agreement supersedes the City's mandatory Rate Schedule assignment for this Customer.

WITNESSETH:

WHEREAS, City operates an electric utility system supplying electric power to City customers; and

WHEREAS, Customer is a significant new customer; and

WHEREAS, City desires to provide the new Customer a discount on their eligible rate schedule for three years as an economic incentive to locate in the City of Lodi as part the City's economic development policy.

NOW, THEREFORE, the Parties hereto agree as follows:

Section 1. **Definitions.** Whenever used in this Agreement, in either the singular or plural number, the following terms shall have the following respective meanings:

- 1.1 "Agreement" is this contract.
- 1.2 "City" is the City of Lodi, a California Municipal Corporation.
- 1.3 "Customer" is Kubota Tractor Corporation.
- 1.4 "Facility" is the Customer's facility receiving service as identified in Exhibit "A."
- 1.5 "Account" is defined in Exhibit "A" for the Customer.
- 1.6 "Parties" are collectively Customer and City.

- 1.7 "kWh" is a kilowatt-hour, an energy charge-billing unit.
- 1.8 "Billing cycle" is the monthly bill.
- 1.9 "Force Majeure," as used herein, means unforeseeable causes beyond the reasonable control of and without the fault or negligence of the Party claiming force majeure. Such an occurrence may include, but is not limited to, acts of God, labor disputes, sudden actions of the elements, actions or inactions by federal, state and municipal agencies, and actions or inactions of legislative, judicial, or regulatory agencies.
- 1.10 "Eligible rate" is the scheduled rate at which the Customer would qualify given historical consumption at their current Stockton, California facility (located at 6665 Hardaway Road, Stockton, CA), served by Pacific Gas & Electric Company.
- 1.11 "Totalization" is the aggregation of all individual meter data for all meters serving the facility so as to create a single-billed account under a single rate schedule.

Section 2. **Rate Application.**

The billing cycle charge for the Customer shall be a 25 percent discount of the eligible rate for the Facilities and Accounts defined in Exhibit "A" over a three-year period, commencing January 1, 2005. Exhibit "A" also identifies what Facilities and Accounts will be totalized or treated as individual facilities for billing purposes. The billing cycle shall be the published G-2 electric utility rate, minus 25 percent, plus a customer charge of \$56.13 per meter per month.

After this contract expires, the Customer shall be assigned to the eligible rate at that time (the published G-2 electric utility rate).

Section 3. **Terms of Agreement.**

- 3.1 Upon signing by all Parties, this Agreement shall be binding for bills rendered on or after January 1, 2005, and shall remain in effect, subject to Paragraph 3.2 below, for bills rendered through December 31, 2007.
- 3.2 If either party fails to perform any of the provisions of this Agreement, the other party may, by written notice given within thirty days of such failure to perform, terminate this agreement. Customer may appeal such termination in writing to the Electric Utility Director. This is in addition to any other legal recourse Customer may have.

Section 4. **Force Majeure.**

- 4.1 If either Party because of Force Majeure is rendered wholly or partly unable to perform its obligations under this Agreement, that Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected, provided that:
- The non-performing Party, within two weeks after the occurrence of the Force Majeure, shall give the other party a written report describing the particulars of the occurrence.
- The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure.
- 4.2 No obligations of either Party which arose before the occurrence causing the suspension of performance are excused as a result of the occurrence.
- 4.3 The non-performing Party uses its best efforts to remedy its inability to perform. This subparagraph shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgement of the Party involved in the dispute, are contrary to its interest.
- It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party having the difficulty.

Section 5. **Assignments.**

- 5.1 Neither Party shall voluntarily assign its rights nor delegate its duties under this Agreement without the written consent of the other Party.

Section 6. **Amendments.**

- 6.1 This Agreement may be amended only by written instrument executed by the Parties or their successors.

Section 7. **Severability.**

- 7.1 In the event that any of the terms, covenants, or conditions of this Agreement shall be held invalid, the Parties intend that all other terms, covenants, and conditions and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that such provisions are not severable from all other provisions of this Agreement.

Section 8. **Governing Law.**

- 8.1 This Agreement shall be interpreted, governed by, and construed under the laws of the State of California.

Section 9. **Counterparts.**

- 9.1 This Agreement may be executed in counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

Section 10. **Headings.**

- 10.1 The headings to the articles in this Agreement are intended for convenience only and not for the purpose of interpreting the provisions of this Agreement.

Section 11. **Notices.**

- 11.1 Any notice, demand or request required or permitted to be given by either Party to the other and any instrument required or permitted to be tendered or delivered by either Party to the other may be so given, tendered or delivered, as the case may be, by depositing the same in any United

States Post Office with postage prepaid, for transmission by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address designated below. Changes in such designation may be made by notice similarly given.

11.2 All written notices or questions shall be directed as follows:

To City: ELECTRIC UTILITY DIRECTOR

 CITY OF LODI

 1331 SOUTH HAM LANE

 LODI CA 95242-3995

To Customer: KUBOTA TRACTOR CORPORATION

 6665 E. HARDAWAY ROAD

 STOCKTON CA 95215

Section 12. **Non-waiver.**

12.1 None of the provisions of the Agreement shall be considered waived by either Party except when such waiver is given in writing. The failure of any Party at any time or times to enforce any right or obligation with respect to any matter arising in connection with this Agreement shall not constitute a waiver as to future enforcement of that right or obligation or any right or obligation of the Agreement.

Section 13. **Warranty of Authority.**

- 13.1 Each of the Parties which has executed and delivered this Agreement represents and warrants that it has agreed to be bound by all the terms, covenants, and conditions of this Agreement and has acted with all the requisite capacity and authority and approval of its governing body.

IN WITNESS THEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers and their seal to be affixed, as of the day and year herein written.

CITY OF LODI

H. Dixon Flynn, City Manager

Date

KUBOTA TRACTOR CORP.

Russ Cobb, Senior Director

Date

APPROVED AS TO FORM:

D. Stephen Schwabauer
Interim City Attorney

ATTEST:

Susan J. Blackston
City Clerk

RATE AGREEMENT

BETWEEN

Lodi Memorial Hospital

AND

THE CITY OF LODI

This Agreement is made by, and between, **Lodi Memorial Hospital** ("Customer") and the CITY OF LODI ("City"), collectively called "the Parties" and individually as "Party". This Agreement supersedes the City's mandatory Rate Schedule assignment for this Customer.

WITNESSETH:

WHEREAS, City operates an electric utility system supplying electric power to City customers; and

WHEREAS, City desires to provide this Customer with a utility rate contract for a period of three years;

NOW, THEREFORE, the Parties hereto agree as follows:

Section 1. Definitions. Whenever used in this Agreement, in either the singular or plural number, the following terms shall have the following respective meaning:

- 1.1 "Agreement" is this contract.
- 1.2 "City" is the City of Lodi, a California Municipal Corporation.
- 1.3 "Customer" is Lodi Memorial Hospital.
- 1.4 "Facility" is the Customer's facility (or facilities) receiving service as identified in Exhibit "A".
- 1.5 "Account" is defined in Exhibit "A" for the Customer.
- 1.6 "Parties" are collectively Customer and City.
- 1.7 "kWh" is a kilowatt-hour, an energy charge billing unit.

1.8 "Billing cycle" is the monthly bill.

1.9 "Force Majeure", as used herein, means unforeseeable causes beyond the reasonable control of and without the fault or negligence of the Party claiming force majeure. Such an occurrence may include, but is not limited to, acts of God, labor disputes, sudden actions of the elements, actions or inactions by federal, state and municipal agencies, and actions or inactions of legislative, judicial, or regulatory agencies.

1.10 "Eligible rate" is the scheduled rate at which the Customer would qualify given historical consumption.

1.11 "Totalization" is the aggregation of all individual meter data for all meters serving the facility so as to create a single billed account under a single rate schedule.

Section 2. Rate Application.

The billing cycle charge for the Customer shall be the eligible rate for the Facilities and Accounts defined in Exhibit “A” over a three-year period, commencing June 1, 2004. Exhibit “A” also defines what Facilities and Accounts will be totalized or treated as individual facilities for billing purposes. The eligible winter rate and summer rate, for all facilities identified in this contract (Exhibit “A”) are as follows:

- winter rate (November 1-April 30)- .0700/kWh;
- summer rate (May 1-October 31)- .0895/kWh;
- Demand Charge: \$0.00 per kw;
- Customer Charge: As per otherwise applicable electric rate schedule per account.

Section 3. Terms of Agreement.

- 3.1 Upon signing by all Parties, this Agreement shall be binding for bills rendered on or after June 1, 2004, and shall remain in effect, subject to Paragraph 3.2 below, for bills rendered through May 30, 2007.
- 3.2 If either party fails to perform any of the provisions of this Agreement, the other party may, by written notice given within ninety days of such failure to perform, terminate this agreement. Customer may appeal such termination in writing to the Electric Utility Director. This is in addition to any other legal recourse Customer may have.

Section 4. Force Majeure.

- 4.1 If either Party because of Force Majeure is rendered wholly or partly unable to perform its obligations under this Agreement, that Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected, provided that:
- The non-performing Party, within two weeks after the occurrence of the Force Majeure, shall give the other party a written report describing the particulars of the occurrence.

The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure.

4.2 No obligations of either Party which arose before the occurrence causing the suspension of performance are excused as a result of the occurrence.

4.3 The non-performing Party uses its best efforts to remedy its inability to perform. This subparagraph shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgement of the Party involved in the dispute, are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party having the difficulty.

Section 5. Assignments.

5.1 Neither Party shall voluntarily assign its rights nor delegate its duties under this Agreement without the written consent of the other Party.

Section 6. Amendments.

- 6.1 This Agreement may be amended only by written instrument executed by the Parties or their successors.

Section 7. Severability.

- 7.1 In the event that any of the terms, covenants, or conditions of this Agreement shall be held invalid, the Parties intend that all other terms, covenants, and conditions and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that such provisions are not severable from all other provisions of this Agreement.

Section 8. Governing Law.

- 8.1 This Agreement shall be interpreted, governed by and construed under the laws of the State of California.

Section 9. Counterparts.

- 9.1 This Agreement may be executed in counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

Section 10. Headings.

- 10.1 The headings to the articles in this Agreement are intended for convenience only and not for the purpose of interpreting the provisions of this Agreement.

Section 11. Notices.

- 11.1 Any notice, demand or request required or permitted to be given by either Party to the other and any instrument required or permitted to be tendered or delivered by either Party to the other may be so given, tendered or delivered, as the case may be, by depositing the same in any United States Post Office with postage prepaid, for transmission by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address designated below. Changes in such designation may be made by notice similarly given;

11.2 All written notices or questions shall be directed as follows:

To City: ELECTRIC UTILITY DIRECTOR

 CITY OF LODI

 1331 SOUTH HAM LANE

 LODI, CA 95242-3995

To Customer: LODI MEMORIAL HOSPITAL

 975 S. FAIRMONT AVENUE

 LODI, CA 95240

Section 12. Non-waiver.

12.1 None of the provisions of the Agreement shall be considered waived by either Party except when such waiver is given in writing. The failure of any Party at any time or times to enforce any right or obligation with respect to any matter arising in connection with this Agreement shall not constitute a waiver as to future enforcement of that right or obligation or any right or obligation of the Agreement.

Section 13. Warranty of Authority.

- 13.1 Each of the Parties which has executed and delivered this Agreement represents and warrants that it has agreed to be bound by all the terms, covenants, and conditions of this Agreement and has acted with all the requisite capacity and authority and approval of its governing body.

IN WITNESS THEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers and their seal to be affixed, as of the day and year herein written.

CITY OF LODI

LODI MEMORIAL
HOSPITAL

H. Dixon Flynn
City Manager

Joseph Harrington
Chief Exec. Officer

Date

Date

Approved as to Form:

Stephen Schwabauer
City Attorney

ATTEST:

Susan J. Blackston
City Clerk

RATE AGREEMENT
BETWEEN
LARRY METHVIN INSTALLATION, INCORPORATED
AND
THE CITY OF LODI

This Agreement is made by, and between, Larry Methvin Installation, Incorporated ("Customer") and the CITY OF LODI ("City"), collectively called "the Parties" and individually as "Party". This Agreement supersedes the City's mandatory Rate Schedule assignment for this Customer.

WITNESSETH:

WHEREAS, City operates an electric utility system supplying electric power to City customers; and

WHEREAS, Customer is a significant new customer; and

WHEREAS, City desires to provide the new Customer with a discount to their eligible rate schedule over two (2) years as an economic incentive to locate in the City of Lodi as part the City's economic development policy.

NOW, THEREFORE, the Parties hereto agree as follows:

Section 1. **Definitions.** Whenever used in this Agreement, in either the singular or plural number, the following terms shall have the following respective meanings:

- 1.1 "Agreement" is this contract.
- 1.2 "City" is the City of Lodi, a California Municipal Corporation.
- 1.3 "Customer" is Larry Methvin Installation, Incorporated.
- 1.4 "Facility" is the Customer's facility receiving service as identified in Exhibit "A."
- 1.5 "Account" is defined in Exhibit "A" for the Customer.
- 1.6 "Parties" are collectively Customer and City.

- 1.7 "kWh" is a kilowatt-hour, an energy charge-billing unit.
- 1.8 "Billing cycle" is the monthly bill.
- 1.9 "Force Majeure", as used herein, means unforeseeable causes beyond the reasonable control of and without the fault or negligence of the Party claiming force majeure. Such an occurrence may include, but is not limited to, acts of God, labor disputes, sudden actions of the elements, actions or inactions by federal, state and municipal agencies, and actions or inactions of legislative, judicial, or regulatory agencies.
- 1.10 "Eligible rate" is the scheduled rate at which the Customer would qualify given historical consumption utilized from the previous glass manufacturer located at this facility in 2003.
- 1.11 "Totalization" is the aggregation of all individual meter data for all meters serving the facility so as to create a single-billed account under a single rate schedule.

Section 2. **Rate Application.**

The billing cycle charge for the Customer shall be at the current, published G-4 electric utility rate, minus a 15 percent rate discount for the Facilities and Accounts defined in Exhibit "A" over a two-year period, commencing June 1, 2004. Exhibit "A" identifies the Facilities as only those located at 875 North Stockton Street, and will be treated as individual facilities for billing purposes.

The billing cycle shall be based on the current City of Lodi published G-4 electric utility rate energy charge, the appropriate Market Cost Adjustment and demand charge (minus the 15 percent rate discount), plus a customer charge of \$128.13 per month, per meter for energy delivery. After this contract expires, the Customer shall be assigned to the eligible rate, with no rate discount.

Section 3. **Terms of Agreement.**

- 3.1 Upon signing by all Parties, this Agreement shall be binding for bills rendered on or after June 1, 2004, and shall remain in effect, subject to Paragraph 3.2 below, for bills rendered through May 30, 2006.
- 3.2 If either party fails to perform any of the provisions of this Agreement, the other party may, by written notice given within thirty days of such failure to perform, terminate this agreement. Customer may appeal such termination in writing to the Electric Utility Director. This is in addition to any other legal recourse Customer may have.

Section 4. **Force Majeure.**

- 4.1 If either Party because of Force Majeure is rendered wholly or partly unable to perform its obligations under this Agreement, that Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected, provided that:
- The non-performing Party, within two weeks after the occurrence of the Force Majeure, shall give the other party a written report describing the particulars of the occurrence.
- The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure.
- 4.2 No obligations of either Party which arose before the occurrence causing the suspension of performance are excused as a result of the occurrence.
- 4.3 The non-performing Party uses its best efforts to remedy its inability to perform. This subparagraph shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgement of the Party involved in the dispute, are contrary to its interest.
- It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party having the difficulty.

Section 5. **Assignments.**

- 5.1 Neither Party shall voluntarily assign its rights nor delegate its duties under this Agreement without the written consent of the other Party.

Section 6. **Amendments.**

- 6.1 This Agreement may be amended only by written instrument executed by the Parties or their successors.

Section 7. **Severability.**

- 7.1 In the event that any of the terms, covenants, or conditions of this Agreement shall be held invalid, the Parties intend that all other terms, covenants, and conditions and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that such provisions are not severable from all other provisions of this Agreement.

Section 8. **Governing Law.**

- 8.1 This Agreement shall be interpreted, governed by, and construed under the laws of the State of California.

Section 9. **Counterparts.**

- 9.1 This Agreement may be executed in counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

Section 10. **Headings.**

- 10.1 The headings to the articles in this Agreement are intended for convenience only and not for the purpose of interpreting the provisions of this Agreement.

Section 11. **Notices.**

- 11.1 Any notice, demand or request required or permitted to be given by either Party to the other and any instrument required or permitted to be tendered or delivered by either Party to the other may be so given, tendered or delivered, as the case may be, by depositing the same in any United

States Post Office with postage prepaid, for transmission by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address designated below. Changes in such designation may be made by notice similarly given.

11.2 All written notices or questions shall be directed as follows:

To City: ELECTRIC UTILITY DIRECTOR

CITY OF LODI

1331 SOUTH HAM LANE

LODI CA 95242-3995

To Customer: LARRY METHVIN INSTALLATION, INC.

875 NORTH STOCKTON STREET

LODI CA 95240

Section 12. **Non-waiver.**

12.1 None of the provisions of the Agreement shall be considered waived by either Party except when such waiver is given in writing. The failure of any Party at any time or times to enforce any right or obligation with respect to any matter arising in connection with this Agreement shall not constitute a waiver as to future enforcement of that right or obligation or any right or obligation of the Agreement.

Section 13. **Warranty of Authority.**

13.1 Each of the Parties which has executed and delivered this Agreement represents and warrants that it has agreed to be bound by all the terms, covenants, and conditions of this Agreement and has acted with all the requisite capacity and authority and approval of its governing body.

IN WITNESS THEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers and their seal to be affixed, as of the day and year herein written.

CITY OF LODI

**LARRY METHVIN
INSTALLATION,
INCORPORATED**

H. Dixon Flynn, City Manager

Kent Snyder, President

Date

Date

APPROVED AS TO FORM:

D. Stephen Schwabauer
Interim City Attorney

ATTEST:

Susan J. Blackston
City Clerk

RESOLUTION NO. 2004-90

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING THE CITY MANAGER TO EXECUTE
ELECTRIC UTILITY RATE CONTRACTS BETWEEN THE
CITY OF LODI AND THREE COMMERCIAL/
INDUSTRIAL CUSTOMERS: KUBOTA TRACTOR
CORPORATION, LARRY METHVIN INSTALLATION,
AND LODI MEMORIAL HOSPITAL

=====

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute electric utility rate contracts between the City of Lodi and Kubota Tractor Corporation, Larry Methvin Installation, and Lodi Memorial Hospital.

Dated: May 5, 2004

=====


I hereby certify that Resolution No. 2004-90 was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 5, 2004, by the following vote:

AYES: COUNCIL MEMBERS – Beckman, Hitchcock, Howard, Land, and Mayor Hansen

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON
City Clerk